

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the PATENT APPLICATION of:

Pertti Lahteenmaki

Application No.: 10/516,477

Confirmation No.: 2844

Filed: July 14, 2005

For: DRINK COMPOSITION AND A
METHOD FOR COMPOSING A DRINK

Group: 1655

Examiner: Susan Coe Hoffman

Our File: BER-PT005

Date: April 29, 2009

DECLARATION OF PERTTI LAHTEENMAKI PURSUANT TO
37 C.F.R. § 1.182Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I, Pertti Lahteenmaki, declare that:

1. I am the named inventor of the subject matter described and claimed in the above-identified patent application, am a citizen of Finland, and reside at Parkkikuja 7, FIN-00850, Helsinki, Finland.
2. I have an M.D., and a Ph.D. in Medicine and have studied genetics and functional nutrients for over 20 years before filing the above identified application.
3. In view of my experience, I would be considered to be at least a person of ordinary skill in this art.
4. I have studied the claim rejections in each of the Office Actions issued

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in this application, as well as the cited references.

5. The Office Actions dated August 29, 2007, April 23, 2008, and November 6, 2008 each reject all pending claims as obvious over Krotzer (WO 99/61088) in view of Thomas (US 5,972,985).

6. The September 29, 2008 Office Action states:

Krotzer teaches a beverage composition that contains guarana, taurine, glucose, fructose and green tea (see Table A, pages 15 and 20)...Thomas teaches using pycnogenols and grape seed extract together as antioxidants that protect the brain. Based on this teaching of the properties of pycnogenols and grape seed extract, an artisan of ordinary skill would have reasonably expected that these ingredient [*sic*] would be beneficial to add to the composition taught by Krotzer.

Pages 4-5.

7. Krotzer's Table A lists over sixty different ingredients. See pages 11-22. A person of ordinary skill in the art would have no motivation to specifically select "glucose, fructose, guarana, taurine," as recited in claim 1, and "green tea," as recited in claim 7, from this broad selection for any reason, muchless in order to produce a composition "that improves muscle and mind function," as recited in claim 1.

8. Nothing in Krotzer's disclosure suggests selecting the claimed ingredients, and undue experimentation would be required in order to arrive at such a combination also including "flavonoids in physiologically active amounts

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selected from the group consisting of conifer bark extract and grapeseed extract," as recited in claim 1.

9. Because undue experimentation would be required, a person of ordinary skill in the art would not use Krotzer alone or in combination with Thomas to arrive at the claimed composition.

10. A person of ordinary skill in the art would not have combined Krotzer and Thomas in order to obtain "a composition that improves muscle and mind function" as recited in the claims.

11. A person of ordinary skill in the art understands a distinction between "protecting the brain," as the September 29, 2008 Office Action states is taught by Thomas and Krotzer, and improving mind function, recited in the claims, and would therefore not look to these references in achieving this objective.

12. "Protecting the brain" implies prevention of negative effects on the brain, thus maintaining the status quo, whereas the currently claimed composition "improves...mind function," meaning that a positive effect is achieved.

13. The claimed composition was originally developed for golfers who had difficulty keeping a steady energy balance during the game. The drink composition has solved the problem of keeping the energy (sugar) balance steady for long time periods, while minimizing mental and physical stress reactions. This function is recited in the claims, stating that the "composition improves muscle and mind

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function, acts as relaxant, and counterbalances the effects of adrenaline."

14. Recent studies have demonstrated that the claimed composition is effective at maintaining energy balance over extended time periods. Subjects who consumed the composition maintained reduced heart rates over these time periods. See Exhibit A, Pro Gradu Master's Thesis, Harriet Hägglund, University of Helsinki, Division of Nutrition, November 2008. Maintaining a reduced heart rate plays important role in decreasing stress reactions.

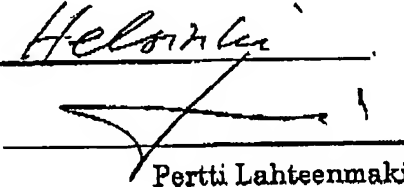
15. This is an unexpected effect achieved by combining the ingredients recited in claims 1, 3, and 5-28.

16. A person of ordinary skill in the art would not anticipate such a result because the composition contains stimulating agents, such as guarana, which is known to increase heart rate. A person of ordinary skill in the art would actually be deterred from including this ingredient in developing a composition that "acts as a relaxant, and counterbalances the effects of adrenaline," as recited in claim 1.

17. The claimed composition is commercially available under the trade name Flow™ drink by wide variety of merchandisers in Finland, and has been met with a great deal of success. See Exhibit B, A presentation "Investment opportunity VC and private investors". The composition is a recognized and popular product among many golfers. See Exhibit C, A presentation "Flow Drinks presentation 080409".

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18. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. All statements were made with the knowledge that willful false statements are punishable by fine or imprisonment, or both, under USC, Title 18, § 1001, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Executed this 30 day of April 2008⁹ at Helsinki

Pertti Lahteenmaki